

The Impact of Change: Child Custody and Support Today

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INTRODUCTION

Having a child gives a parent the right and duty to control and support their child. This responsibility also requires the parent to provide services until the child is emancipated or of the age of majority. In a marriage, both parents legally have full custodial rights and control over the services for the care of their children. The filing of separation or divorce gives the court grounds to interfere with this parental right and control. The court may then determine who should have custody of the child, as well as the level or degree of support.^{1,5}

Filing for separation or divorce can lead to far-reaching impacts on both children and parents from a psychological and financial standpoint.² Many factors contribute to the psychological and

financial impact; for example, age of the child, financial condition needed to provide for the child after separation or divorce of the parents, extent of parental discord, etc. A wide range of psychiatric disturbances are also reportedly increased in children and parents following divorce proceedings.³

HISTORY AND CURRENT LAW

To minimize the impact on the family, recent changes in child custody and support determinations have occurred. Historically, changes in custody decisions have been influenced by the evolving recognition of the rights of women as well as children. In the 19th and early 20th centuries, the “tender years” doctrine became the primary standard for determining child custody. This was based on the precedent that there was a unique

relationship between mothers and infants in their “tender years.” The application of this doctrine led to changes in the usual custody determination and mothers gained custody in greater proportion to fathers. As the “tender years” doctrine grew along with women’s rights, the “best interests” of the child standard grew with the increasing recognition of the rights of children. This “best interests” standard places the rights of the child above the rights of parents.^{2,4}

In Tennessee, the court will consider all relevant factors in determining the “best interest” of the child. Many of the factors listed in the TCA, Section 36-6-106 are:

1. The love, affection and emotional ties existing between the parent and child;
2. The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care, the degree a parent has been the primary caregiver;
3. The importance of continuity in the child’s life and the length of time the child has lived in a stable, satisfactory environment;
4. The stability of the family unit of the parents;
5. The mental and physical health of the parents;
6. The home, school, and community record of the child;
7. The reasonable preference of the child if twelve (12) years of age or older;
8. Evidence of physical or emotional abuse;
9. The character and behavior of any other person who resides in the home; and



10. Each parent's past and potential future performance of parenting responsibilities.⁵

Child support guidelines also have changed recently. Child support is a natural obligation and a statutory duty for both parents. Child support has generally been paid to the custodial parent by the non-custodial parent.¹ In 33 other states and now in Tennessee, child support guidelines are based on an "income share formula." This formula requires that both of the parents' incomes be considered when calculating a child support order. The calculation also include such items as child care costs and medical insurance premiums.⁶ The major goals of the guidelines are:

...to decrease the number of impoverished children living in single parent families, make child support awards more equitable and

*fair, promote settlements, encourage parents to pay support and maintain contact with their children, and reduce the economic impact on the child so that the child maintains a higher standard of living and by ensuring more consistent treatment of persons in similar circumstances...*⁷

CONCLUSION

Divorce can be a traumatic event for both parents and children. The goal of changing laws for custody and child support is to assist both parents and children. By focusing on the "best interests" of the child and the "income share formula," the child's environment may become more normalized. As society changes and the courts continue to strive to ensure fairness for both children and parents custody and support issues, review of these laws will be a constantly evolving responsibility of the courts in the future.

References

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